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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,267	02/16/2001	Chaohuang Zeng	STFUP017/S00-245	5280

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EXAMINER

SWERDLOW, DANIEL

ART UNIT

PAPER NUMBER

2644

DATE MAILED: 03/23/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/788,267

Applicant(s)

ZENG ET AL.

Examiner

Daniel Swerdlow

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: the response is non-compliant (see attached).

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See attached.

Response to Amendment

1. The amendment after final rejection filed on 1 March 2004 has not been entered because the response is non-compliant under 37 CFR 1.121 as amended effective July 30, 2003. See Final Rule: **Changes To Implement Electronic Maintenance of Official Patent Application Records** (68 *Fed. Reg.* 38611 (June 30, 2003)). The response is non-compliant because Claim 21 is presented with the improper status identifier "previously amended". In order to facilitate prosecution, the intention of the response is addressed here.

2. Applicant's arguments, see page 12, last line, filed 1 March 2004, with respect to rejection of Claim 25 under 35 USC 102, 2nd paragraph have been fully considered and would have been found persuasive if the amendment had been entered. The rejection of Claim 25 under 35 USC 102, 2nd paragraph would have been withdrawn. The prior art rejection of Claim 25 is maintained.

Response to Arguments

3. Applicant's arguments filed 1 March 2004 have been fully considered but they are not persuasive.

4. Regarding Claims 1, 6, 11, 15 and 20, applicant alleges that "[n]owhere does Bingel teach that the interference canceller is to be at a location remote from the Bingel receiver". Examiner respectfully disagrees. Bingel explicitly states that "the interference filter may be implemented separately from a modem" (column 3, lines 30-33). Further, in Fig. 1 Bingel depicts the adder (12), detector (9) and sampling/scaling device (10) that comprise the interference canceller as being outside of the customer premises (6). Whether or not Bingel claims this disclosed feature is moot. "The use of patents as references is not limited to what the

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patentees describe as their own inventions or to the problems with which they are concerned.

They are part of the literature of the art, relevant for all they contain.” In re Heck, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting In re Lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)).

5. Regarding Claims 2 and 26, applicant alleges that “Sands does not teach or make any mention of a timing offset between the two claimed parameters for achieving synchronization or for any other purpose”. Examiner respectfully disagrees. Sands teaches the importance of synchronization of transmitters to reduce crosstalk (column 5, lines 50-53). In mitigating crosstalk in a system with two transceivers (column 6, lines 13-27) one skilled in the art would have understood that for a particular receiver, one transmitter is producing primary data and the other is producing crosstalk data. The extent to which they are undesirably unsynchronized is referred to in Sands as the alignment error estimate, which corresponds to the timing offset estimate claimed. Sands discloses adjustment of synchronization in accordance with this estimate to mitigate crosstalk. As such, one skilled in the art would have been motivated to apply the teaching of Sands in conjunction with the teaching of Szechenyi to cumulatively achieve the benefits of both. Since the claims do not recite any limitation on how the timing offset is used, the combination of Szechenyi and Sands meets all elements of these claims.

6. Regarding Claims 3 and 28, applicant’s arguments are limited to dependence from Claims 2 and 26, respectively and are not persuasive for the reasons stated above.

7. Regarding Claims 4, 5, 7, 12, 13, 14, 16, 19, 22, 25 and 29, applicant’s arguments relating to lack of correspondence with the reference to Bingel are not persuasive for the reasons stated above.

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8. Regarding Claims 4, 5, 7, 12, 13, 14, 16, 19, 22, 25 and 29, in response to applicant's allegations that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, such teaching, suggestion or motivation has been given in the prior Office action.

9. Regarding Claim 40, applicant made no arguments in the previous response regarding patentability. The only mention of Claim 40 in the response filed on 20 October 2003 is the statement that "[a]pplicant introduces new independent claim 40 as corresponding to original claim 4". There follows a discussion of Claims 4, 5, 11-14, 19, 21, 29 and 31 including the statement "each of these rejections relies on citations in the Szechenyi '037 reference as asserted against underlying claims 1, 15 or 25". Since the new Claim 40 was independent, it was clear that this discussion was in reference to amended Claim 4, which depends from Claim 1 as amended in that response. As such, applicant made no argument regarding the patentability of Claim 40 and examiner's maintaining the same rejection is not inconsistent with the final rejection.

10. Regarding applicant's last argument on page 15 of the response mailed on 1 March 2004, as stated above, Bingel teaches processing at a remote location.

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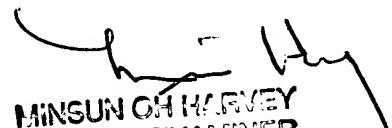
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Swerdlow whose telephone number is 703-305-4088. The examiner can normally be reached on Monday through Friday between 8:00 AM and 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forrester Isen can be reached on 703-305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ds


MINSUN OH HARVEY
PRIMARY EXAMINER